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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

**VOICE INTERNATIONAL, INC., a
 California corporation; DAVID
 GROBER, an individual,**

Plaintiffs,

vs.

**OPPENHEIMER CINE RENTAL,
 LLC, et al.,**

Defendants

Case No.: 2:15-cv-08830-JAK(KS)

Corrected¹ Joint Status Report

¹ The Joint Status Report [Dkt 228] filed by Plaintiffs last night was not the correct version and did not reflect all of the points made by the Oppenheimer Defendants, including that Plaintiffs never submitted their final infringement contentions. Oppenheimer Defendants informed Plaintiffs several times that they filed the incorrect version of the Joint Report, but Plaintiffs still have not yet responded or filed the correct version. Oppenheimer Defendants advised Plaintiffs that they would therefore proceed with filing the correct version. Having not received a return message back from Plaintiffs, the Oppenheimer Defendants have not included their signatures in this corrected version of the Status Report.

PLAINTIFF'S STATEMENT

In the party's Joint Report, Dkt. 218, Defendants requested mediation. Plaintiffs disagreed. Plaintiffs, after recent talks with OPEL, now agree mediation could produce results.

Taking the lead, Plaintiffs submitted to Defendant OPEL a settlement offer similar, if not almost identical to the settlement resolution for three defendants in Mako-1. That offer was negotiated for defendants in Mako-1 by David Peck of Coast Law. In the instant case, OPEL is likewise represented by David Peck of Coast Law. The previous settlement seemed like a good framework and was successful.

Concerning mediation dates and the deposition of John Dann. Plaintiffs held discussion with counsel for OPEL, Mark Young. They agreed that Mr. Young and John Dann would be available for Mr. Dann's deposition in Los Angeles on the day after mediation. The only stipulation is Plaintiffs pay overnight hotel for Mr. Young and Mr. Dann. Plaintiffs agreed and notified Mr. Young of this, in writing, in their settlement offer.

In the February 12, 2018 hearing, Defendant's Mark Young said he planned to take Grober's deposition in Los Angeles.

The Court advised the parties to submit a schedule based on mediation. Plaintiffs' request follows the above agreements with one exception. Plaintiffs request Dann's deposition take place the *day before* mediation, rather than the day after. Grober's deposition could also occur prior to mediation. This would allow mediation to proceed with the most significant discovery on the table, including Dann and Grober's depositions. This is the best chance for success. Let the parties negotiate with the truth on as many facts as possible.

Discovery on Oppenheimer remains open concurrent with OPEL. This so Plaintiff can get follow-up discovery from Oppenheimer on information and documents received from OPEL. The Court's order reopened fact discovery,

1 without limitations. Doc. 224.

2 1. Deposition of John Dann, 1-2 days prior to mediation.

3 2. Deposition of Grober, 1-2 days prior to mediation if requested by Defendants.

4 3. Mediation with the Magistrate on or about March 23, 2018.

5 4. Propounded discovery for both parties, normally 30+ days, reduced to 25 days
6 including emailing responses to the propounding party. (The purpose is to allow
7 both parties to propound and receive discovery prior to the depositions and
8 mediation. If there is no settlement, the parties will have time to propound
9 discovery after the depositions and mediation, and receive it prior to the close of
10 discovery, April 30, 2018. Shortening discovery responses from 30 days to 25 days
11 including mailing will cause no prejudice to either party.

12 13 **Discovery required**

14 The deposition of Dann will include questions about MakoHead rental and
15 sales activities and related discovery including prior to the incorporation of OPEL.
16 Attached exhibit OPP000111, obtained from Oppenheimer, shows OPEL was doing
17 MakoHead rentals at least as early as April 16, 2012, eight months before Mako
18 declared bankruptcy, and over a year before OPEL was incorporated in the
19 Bahamas. JDO76. Discovery prior to OPEL's incorporation is well founded, and
20 it is not known how far back these activities go.

21 Also, Oppenheimer's relationship with the MakoHead and its rentals and
22 sales all started in about 2006, and took place with John Dann as the office manager
23 for all MakoHead activities. Oppenheimer was a defendant in Mako-1, was
24 dismissed on jurisdiction due to lack of evidence, which was later uncovered.
25 Activities and communications from the time Oppenheimer commenced MakoHead
26 activities, are highly relevant to this case, including for willful infringement which
27 has been pleaded.

28 Plaintiffs request the Court instruct that in the OPEL deposition, they cannot

1 refuse to answer if the question pertains to any aspect of Mako Products Inc.,
2 OPEL, the MakoHead, and any documents pertinent to those three, with the
3 exception of not being required to disclose the content of privileged
4 communications with their attorneys.

5
6 **OCEANIC PRODUCTION EQUIPMENT LTD'S (OPEL's) STATEMENT**

7 As stated by OPEL during the trial setting conference on February 12, 2018,
8 OPEL is preparing motions for summary judgment of invalidity and
9 noninfringement, which it anticipates filing within a few weeks (no more than 30
10 days) after the Court's Supplemental Claim Construction ruling. Also, as stated by
11 OPEL during the trial setting conference, mediation will be far more productive
12 after the summary judgment motions are filed. The motions will draw attention to
13 strengths and weaknesses.

14 OPEL proposes mediation at or near the close of discovery, on or about April
15 30, 2018. This will allow the Plaintiffs time to consider and respond to the
16 summary judgment motions, for the benefit of the mediation. This will also allow
17 time for OPEL and the Plaintiffs to conclude any remaining discovery.

18 Following the trial setting conference on February 12, 2018, Mark Young,
19 counsel for OPEL, discussed with Plaintiff David Grober and Robert Lauson that if
20 Plaintiffs would like to depose John Dann the day after mediation, he would make
21 Mr. Dann available during normal business hours, provided that Plaintiffs pay for
22 Mr. Young's and Mr. Dann's overnight stay and per diem expenses for the
23 additional day, and further provided that Plaintiffs conclude the deposition at a time
24 that allows Mr. Young and Mr. Dann to travel to the airport and check-in for flights
25 home that evening. Mr. Young also made clear that he and Mr. Dann would stay in
26 a hotel of their choosing and would not return on a red-eye flight. In view of these
27 constraints, Mr. Young advised Plaintiff Grober and Robert Lauson that they could
28 simply notice and schedule the deposition in Florida in accordance with the Federal

1 Rules of Civil Procedure, where they can control their schedule, travel and
2 accommodations.

3 Also following the trial setting conference on February 12, 2018, Mr. Young
4 made clear to Plaintiff Grober and Robert Lauson that he would not be willing to
5 extend the stay for a total of 3 consecutive days to also conduct a deposition of Mr.
6 Grober. Mr. Young will notice and schedule Mr. Grober's deposition in accordance
7 with the Federal Rules of Civil Procedure and this Court's scheduling order, if and
8 when Mr. Young and OPEL decide to proceed with a deposition of Plaintiffs.
9 OPEL objects to any attempt by Plaintiffs to require OPEL to take a deposition or
10 to dictate the timing and location of OPEL's depositions.

11 Under Rules 33(b)(2) and 34(b)(2)(A) of the Federal Rules of Civil
12 Procedure, responses to discovery are due within 30 days. With over two months
13 remaining before the close of discovery, each party has ample time for follow-up
14 discovery. OPEL objects to any shortening of the allowable time for response.

15 Plaintiffs' requested instruction regarding refusals to answer is improper, as
16 exceedingly vague, unwarranted and not in the form of a motion. OPEL intends to
17 comply with all rules applicable to discovery depositions, and has never indicated
18 otherwise.

19 Plaintiffs flagrantly misrepresent OPP000111. Mako Products, Inc., formerly
20 a Florida corporation, was liquidated and dissolved pursuant to and in accordance
21 with a voluntary bankruptcy, in which Plaintiffs unsuccessfully brought claims for
22 infringement of the '622 patent. OPEL acquired assets of Mako Products, from the
23 Mako Products bankruptcy. Among the acquired assets were Mako Products
24 receivables. OPP000111 is an invoice (# 9334) to Oppenheimer Cine Rental, LLC,
25 dated June 13, 2012. Originally, the invoice was sent by Mako Products to
26 Oppenheimer Cine Rental, LLC. Originally, the invoice identified Mako Products
27 in the upper left portion of the invoice. OPEL was not formed until May 29, 2013.
28 After the formation of OPEL and OPEL's acquisition of the Mako Products assets,

1 OPEL updated Mako Products QuickBooks file with OPEL's information. To
2 pursue payments on receivables and have those payments made payable to OPEL,
3 OPEL reissued invoices by printing them from QuickBooks. QuickBooks retained
4 all information from the original invoice, as originally issued by Mako Products,
5 except the identification in the upper left portion of the invoice. That identification
6 was replaced, by QuickBooks, with OPEL's information. The date, description,
7 invoice number, amounts and customer information remained the same as on the
8 original invoice.

9 OPEL objects to re-opening discovery with the Oppenheimer defendants.
10 Plaintiffs have already had ample time to conduct and conclude discovery with the
11 Oppenheimer defendants. Plaintiffs have not moved for the re-opening of
12 discovery and have not shown good cause for deviating from the previously
13 established schedule. Additionally, the request is untimely. Many months have
14 passed since the close of discovery.

15 16 **OPPENHEIMER DEFENDANTS' STATEMENT**

17 As set forth by the Court at the February 12, 2018 Status Conference,
18 discovery as to the Oppenheimer Defendants is *closed* except as to any issues that
19 were not known or should have been known to Plaintiffs which becomes revealed
20 through discovery from OPEL. Plaintiffs are not permitted to reopen discovery at
21 this late stage of the case. Contrary to Plaintiffs' claim in citing to Docket No. 224,
22 the Court never reopened discovery without limitation.

23 Plaintiffs also failed to submit any final infringement contentions in this case.
24 Thus, what is instead clear from the Court's order (Dkt. No. 224) is that Plaintiffs
25 are barred from submitting their final infringement contentions at this stage beyond
26 final infringement contentions relating to the supplemental terms at issue in the
27 parties' supplemental claim constructions.

28 Plaintiffs continue to refuse to make any reasonable settlement offer to

1 Oppenheimer Defendants and instead have apparently only submitted a settlement
2 offer to OPEL, as represented by Plaintiffs above.

3 The Oppenheimer Defendants are amenable to mediation before Mag. J.
4 Stevenson no earlier than the end of March 2018 after the Court issues its
5 supplemental claim construction ruling and after OPEL files its motion for
6 summary judgment. The Oppenheimer Defendants will appear at such mediation
7 provided that OPEL is also present at the mediation.

8
9
10 Respectively Submitted,
11 DATED: February 20, 2018 LAUSON & TARVER LLP

12 By: /s/_____
13 Robert J. Lauson, Esq.
14 Attorney for Plaintiff
VOICE INTERNATIONAL

15 By: /s/_____
16 David Grober
17 In Pro Per

18 FOX ROTHSCHILD, LLP

19
20 By: /s/ Ashe Puri_____
21 James E. Doroshow, Esq.
22 Ashe Puri, Esq.
23 Attorney for Defendant
OPPENHEIMER CINE RENTAL,
OPPENHEIMER CAMERA RENTAL,
MARTY OPPENHEIMER

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25 MARK YOUNG, P.A.

26 By: /s/ Mark Young_____
27 Mark Young, Esq.
28 Attorney for Defendant
OCEANIC PRODUCTION EQUIPMENT, LTD.

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